

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Juan Arango	Team: Squad #9	CCRB Case #: 202002279	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 03/19/2020 4:30 PM	Location of Incident: In front of § 87(2)(b)	Precinct: 44	18 Mo. SOL 9/19/2021	EO SOL 5/6/2022	
Date/Time CV Reported Fri, 03/20/2020 1:18 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Fri, 03/20/2020 1:18 PM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Kieran Brennan	30990	965958	044 PCT
2. POM Ryan Lopez	09227	965783	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan questioned § 87(2)(b)	§ 87(2)(b)
B.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan searched the vehicle in which § 87(2)(b) was an occupant.	§ 87(2)(b)
C.POM Kieran Brennan	Force: Police Officer Kieran Brennan used physical force against § 87(2)(b)	§ 87(2)(b)
D.POM Ryan Lopez	Force: Police Officer Ryan Lopez used physical force against § 87(2)(b)	§ 87(2)(b)
E.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
F.POM Ryan Lopez	Abuse: Police Officer Ryan Lopez interfered with § 87(2)(b)'s use of a recording device.	§ 87(2)(b)
G.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan refused to provide his name to § 87(2)(b)	§ 87(2)(b)
H.POM Ryan Lopez	Abuse: Police Officer Ryan Lopez refused to provide his name to § 87(2)(b)	§ 87(2)(b)
I.POM Kieran Brennan	Abuse: Police Officer Kieran Brennan seized § 87(2)(b)'s property.	§ 87(2)(b)

Case Summary

On March 20, 2020, § 87(2)(b) filed the following complaint with the CCRB via the Call Processing System.

On March 19, 2020, at approximately 4:30 p.m., § 87(2)(b) doubled parked his Gray 2020 Honda Accord with tinted windows in front of § 87(2)(b) in the Bronx to pick up his wife, § 87(2)(b). While waiting for § 87(2)(b), Police Officer Kieran Brennan and Police Officer Ryan Lopez pulled up behind § 87(2)(b)'s vehicle. PO Brennan requested § 87(2)(b)'s driver license, which § 87(2)(b) provided. PO Brennan asked § 87(2)(b) "Is there a reason why I should search your car. Are you hiding something in there?" (**Allegation A: Abuse of Authority – Question: § 87(2)(g)**) Right after, PO Brennan asked § 87(2)(b) to exit the vehicle and searched § 87(2)(b)'s vehicle, including a backpack that was on the front passenger seat (**Allegation B: Abuse of Authority – Vehicle Search: § 87(2)(g)**).

PO Brennan exited § 87(2)(b)'s vehicle and showed § 87(2)(b) a bag of marijuana that he recovered from inside. PO Brennan instructed § 87(2)(b) to go back to the vehicle and to open the trunk. On his way back to the vehicle, § 87(2)(b) pulled out his cellphone to take a photo of PO Brennan and PO Lopez, but PO Brennan and PO Lopez allegedly attempted to stop § 87(2)(b) by pushing him towards his vehicle as they said, "Get in the car. Get in the car." § 87(2)(b) told the officers that he wanted their names, which neither officer provided or allowed him to photograph. (**Allegations C and D – Force: Physical Force, § 87(2)(g)**) (**Allegations E and F – Abuse of Authority: Interference with recording: § 87(2)(g)**). (**Allegations G and H – Abuse of Authority: Refusal to provide names, § 87(2)(g)**). § 87(2)(b) opened the trunk and PO Brennan looked into it (**within allegation B**). At the end, PO Brennan and PO Lopez left the scene and § 87(2)(b) realized that PO Brennan had not given his driver license back (**Allegation I: Abuse of Authority: Seizure of property: § 87(2)(g)**).

PO Brennan issued a summons to § 87(2)(b) for § 87(2)(b) (**Board Review 01**). PO Lopez issued a summons for § 87(2)(b) (**Board Review 15**).

The investigation obtained Body-Worn Camera footage (**Board Review 02**) (**Board Review 03**).

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Kieran Brennan questioned § 87(2)(b)
Allegation (B) Abuse of Authority: Police Officer Kieran Brennan searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was double parked in his vehicle with tinted windows when PO Brennan and PO Lopez pulled up behind him.

During his CCRB interview, § 87(2)(b) explained that PO Brennan asked § 87(2)(b) for his driver license and registration (**Board Review 04**). § 87(2)(b) questioned the reason why he was stopped and gave PO Brennan his driver license. PO Brennan told § 87(2)(b) that the tints of the vehicle were too dark. PO Brennan asked § 87(2)(b) "Where is this city located in your license;" to which, § 87(2)(b) angrily replied, "That's none of your business. Are you going to write me a ticket for tints?" Right after, PO Brennan asked § 87(2)(b) "Is there a reason why you have this attitude?" § 87(2)(b) replied, "Because I just told you everything that I have seen you doing and because you lied to me. I don't have time for this. If you are going to write me a ticket, write the ticket for the tints and let me go about my business." PO Brennan asked § 87(2)(b) "Is there a reason why I should search your car? Are you hiding something there?" PO Brennan then instructed § 87(2)(b) to step out of the vehicle.

§ 87(2)(b) exited the vehicle and moved to the trunk with PO Lopez. § 87(2)(b) did not observe what PO Brennan did after, but he heard § 87(2)(b) who witnessed the incident, saying, "Why are you going inside his bookbag? You are dumping his stuff out." After the vehicle search, PO Brennan exited § 87(2)(b)'s vehicle, dangled a bag of marijuana, and told § 87(2)(b) to go back to the vehicle and to "pop the trunk." § 87(2)(b) explained to the CCRB that he acknowledged having a bag

of marijuana inside the bookbag, but that he forgot it was there on that day.

During a follow-up phone call, § 87(2)(b) stated that he did not smoke marijuana on that day because he was coming from physical therapy and that he does not smoke marijuana in the vehicle (**Board Review 16**).

According to PO Brennan, upon approaching § 87(2)(b)'s vehicle, he noticed a strong odor of marijuana emanating from the vehicle which made him believe that there was marijuana inside (**Board Review 05**). PO Brennan asked § 87(2)(b) for his identification which he provided; however, § 87(2)(b) was very nervous, agitated, looking around and speaking in an excited manner as he asked PO Brennan why he was being stopped. PO Brennan believed that he may have asked § 87(2)(b) if he had marijuana inside the vehicle after he asked § 87(2)(b) for his identification, but he did not recall exactly if that happened. PO Brennan asked § 87(2)(b) to exit the vehicle. PO Brennan did not remember if he informed § 87(2)(b) that he wanted to search his vehicle or if he explained to § 87(2)(b) why he should search the vehicle or asked § 87(2)(b) if there was something hidden in the vehicle. PO Brennan told the CCRB that § 87(2)(b) was very nervous and argumentative and based on his experience and training, § 87(2)(b) possibly had something concealed in his grabbable area. PO Brennan believed he smelled an odor of marijuana coming from § 87(2)(b)'s clothes when § 87(2)(b) exited the vehicle; however, PO Brennan did not search § 87(2)(b).

PO Brennan entered § 87(2)(b)'s vehicle, looked around in the interior. PO Brennan searched the grabbable area, including the center console and a dark-colored backpack that was placed on the front passenger seat. PO Brennan explained that the odor of marijuana could have come from anywhere in the vehicle. PO Brennan opened the backpack and recovered a dime bag of marijuana, which seemed to contain approximately one gram of marijuana. PO Brennan then exited the vehicle and told § 87(2)(b) that he had recovered marijuana. PO Brennan asked § 87(2)(b) to go back to the vehicle and PO Brennan searched the trunk. PO Brennan argued that the purpose for searching the trunk was to look for large quantities of marijuana.

During his CCRB interview, PO Lopez explained that he was standing by the front passenger door while he held the door open and PO Brennan spoke with § 87(2)(b) (**Board Review 06**). When PO Brennan asked § 87(2)(b) to exit the vehicle, PO Lopez did not exactly know what prompted PO Brennan to do that. PO Lopez explained that from where he was standing, he could not smell any marijuana emanating from § 87(2)(b)'s vehicle.

At the 1:04-minute mark in PO Brennan's BWC video footage, PO Brennan asked § 87(2)(b) for his driver license (**Board Review 07**). § 87(2)(b) questions PO Brennan's reason for stopping him and provides his driver license after being asked a second time. PO Brennan then asks § 87(2)(b) if there is a reason he seems a little agitated. At the 2:56-minute mark, PO Brennan asks § 87(2)(b) about a city that appears on his driver license; to which, § 87(2)(b) becomes upset and says that PO Brennan is harassing him. PO Brennan tells § 87(2)(b) that he is making the situation worse. § 87(2)(b) continues arguing and asks PO Brennan to leave him alone. At the 3:36-minute mark, PO Brennan asks § 87(2)(b) "Is there something in the car that I should know about? Is that why you are acting like that?"

At the 4:18-minute mark, PO Brennan searches the driver side door's compartment and then bends over to look under the front driver seat (**Board Review 07**). At the 4:50-minute mark, PO Brennan opens and searches the arm rest compartment in between the front driver seat and the front passenger seat. At the 5:17-minute mark, PO Brennan opens and searches the glove compartment. At the 5:29-minute mark, PO Brennan grabs § 87(2)(b)'s black backpack and opens its pockets. At the 5:43-minute mark, PO Brennan removes a pack of tobacco cigarettes and a small zip lock bag with marijuana from one of the pockets from the backpack. Right after, PO Brennan leans over to the backseat and opens the back pocket of the passenger seat. At the 9:16-minute mark, PO Brennan searches the trunk.

At the end, PO Brennan issued a summons for § 87(2)(b) to § 87(2)(b) and PO Lopez a summons for § 87(2)(b) (**Board Review 01**) (**Board Review 15**).

§ 87(2)(g)

§ 87(2)(g)

People v. Chestnut, 43 A.D. 2d 260 (1974) (Board Review 08) – The smell of marijuana is sufficient to provide officers with probable cause to search a vehicle.

People v. Jones, 54 Misc. 3d 536 (2016) (Board Review 09) - If probable cause justifies the search of a vehicle, it justifies the search of every part of the vehicle and its content that may conceal the object of the search, including the vehicle's trunk.

§ 87(2)(g)

Allegation (C) Force: Police Officer Kieran Brennan used physical force against § 87(2)(b)
Allegation (D) Force: Police Officer Ryan Lopez used physical force against § 87(2)(b)
Allegation (E) Abuse of Authority: Police Officer Kieran Brennan interfered with § 87(2)(b)'s use of a recording device.
Allegation (F) Abuse of Authority: Police Officer Ryan Lopez interfered with § 87(2)(b)'s use of a recording device.
Allegation (G) Abuse of Authority: Police Officer Kieran Brennan refused to provide his name to § 87(2)(b)
Allegation (H) Abuse of Authority: Police Officer Ryan Lopez refused to provide his name to § 87(2)(b)

According to § 87(2)(b) after PO Brennan instructed him to open the trunk, § 87(2)(b) walked towards his vehicle and held his phone to take a picture of PO Brennan and PO Lopez's names and shield numbers, but both officers attempted to stop him (**Board Review 04**). PO Brennan and PO Lopez pushed him towards the door of his vehicle as they both said, "Get in the car. Get in the car." They pushed his arms and back. § 87(2)(b) told PO Brennan and PO Lopez, "Wait. Hold on, I can get your names. I am allowed to get your names." PO Brennan and PO Lopez continued pushing § 87(2)(b) towards his vehicle while § 87(2)(b) told the officers, "Get off me. Don't push me." PO Brennan continued saying, "Get in the car. We will give you a business card." § 87(2)(b) then told PO Brennan that he did not want a business card but to get their names because PO Brennan already searched the vehicle. § 87(2)(b) could not take a photograph of PO Brennan and PO Lopez's names and shield numbers and instead, he recorded a video.

At the 1:10-minute mark in PO Lopez's BWC video footage, § 87(2)(b) pulls out his cellphone, holds it in front of PO Lopez's chest where the name tag and shield is located and verbally says, "We got Officer Lopez and whatever his name is." PO Lopez does not attempt to stop him from recording or says anything to him (**Board Review 10**).

At the 4:21-minute mark in PO Lopez's BWC video footage, PO Brennan approaches § 87(2)(b) and asks him to go back to his vehicle. As § 87(2)(b) walks towards his vehicle, he turns around and hold his cellphone up to PO Brennan's chest, where the name and shield number would be, while saying, "I wanna make sure I get your name." PO Lopez replies, "That's fine." PO Brennan says to § 87(2)(b) "You are gonna get a ticket with my name on it." § 87(2)(b) replies, "It's okay, alright" and continues holding his phone in front of PO Brennan's name and shield. Right after, PO Brennan says, "Go take a seat. Come on" and stretches his arm and touches § 87(2)(b)'s right elbow. § 87(2)(b) says to PO Brennan, "You don't get to touch me. Don't touch me." PO Lopez tells § 87(2)(b) "We are asking you if you can stay in the car. You are making the situation even worse. PO Brennan then touches § 87(2)(b)'s right arm for a second time and says, "take a seat." In response, § 87(2)(b) says, "Stop touching me." PO Brennan replies, "Why are you making a little scene?" § 87(2)(b) says, "I said I am getting your name. I want to get your name in my phone" while he continues holding his cellphone in front of PO Brennan's name and shield number. At the 5:15-minute mark, § 87(2)(b) holds his cellphone and points it at PO Brennan's name and shield and says, "That's one."

§ 87(2)(b) then turns around towards PO Lopez, points his cellphone at his chest where the name tag and shield number would be and says, “And two.” PO Brennan and PO Lopez both say to § 87(2)(b) “You are going to get a business card with our names on it;” to which, § 87(2)(b) replies, “I don’t want a business card. I want them in my phone.” Right after, PO Brennan reaches into his jacket, pulls out a business card and gives it to § 87(2)(b) PO Lopez does not have any physical contact with § 87(2)(b)

§ 87(2)(g)

Allegation (I) Abuse of Authority: Police Officer Kieran Brennan seized § 87(2)(b) s property.

According to § 87(2)(b) after PO Brennan and PO Lopez issued him the summonses, PO Brennan returned to his vehicle, gave him both summonses and both officers left. Right after, § 87(2)(b) noticed that PO Brennan did not give him his driver license back.

At the 1:08-minute mark of PO Brennan’s BWC footage, PO Brennan requests § 87(2)(b) s for his license, registration and insurance while standing in front of the front driver side window (**Board review 07**). § 87(2)(b) asks PO Brennan what the problem is, and PO Brennan replies that he will explain that to him once § 87(2)(b) gives him every document. Even though the BWC footage does not capture the time when PO Brennan physically takes § 87(2)(b) s driver license, at the 1:46-minute mark, PO Brennan tells § 87(2)(b) the reason for the vehicle stop.

At the 9:40-minute mark of PO Brennan’s BWC footage, PO Brennan enters the RMP with PO Lopez to issue the summonses. PO Brennan and PO Lopez both talk about which summonses they are going to issue to § 87(2)(b) PO Lopez asks for § 87(2)(b) s license. PO Brennan hands PO Lopez what appears to be a driver license and PO Brennan says, “Just put it like in the middle” PO Lopez then moves the RMP’s computer screen and PO Brennan adds, “No, the ID.” At the 12:04-minute mark, PO Lopez takes the driver license and gives it to PO Brennan who grabs it with his left hand and places it somewhere on the left side. The driver’s license is not captured by the BWC again after this point. At the 19:05-minute mark, PO Brennan is captured telling PO Lopez, “I’ll give it to him” as he extends his right hand and PO Lopez hands a white summons with an envelope to him. PO Brennan places the pink summons in front of the white summons and holds them with his right hand as he exits the RMP. At the 19:23-minute mark, PO Brennan approaches the front driver side window and tells § 87(2)(b) “All right, so, you are getting a criminal summons for § 87(2)(b)” and gives the pink summons to § 87(2)(b) only. § 87(2)(b) says, “All right” and grabs the summons. Right after, PO Brennan extends his right hand and gives § 87(2)(b) a white summons, in front of what appears to be an envelope, and says, “And you are getting a parking ticket for § 87(2)(b).” § 87(2)(b) grabs the white summons and the envelope with one hand and holds it in front of the driver side window as speaks to PO Brennan. PO Brennan then explains to § 87(2)(b) that he has 15 days to answer the summons (**Board Review 07**). At no point in the process of PO Brennan giving the summonses to § 87(2)(b) and § 87(2)(b) handling the summonses does the BWC capture § 87(2)(b) s driver license.

According to PO Brennan, after he issued the summons for § 87(2)(b), he returned to § 87(2)(b) s vehicle and gave him both summonses along with the driver license (**Board Review 11**). Upon being presented his BWC footage, PO Brennan stated that he typically places the driver license under the summonses when he gives them back and that he believed he put § 87(2)(b) s driver license in between the parking summons and the envelope or behind the envelope.

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**Board Review 12**).
- PO Brennan has been a member of service for two years and has been a subject in one CCRB complaint which is currently under investigation (see officer history).
- PO Lopez has been a member of service for two years and this is the first CCRB complaint to which he has been a subject (See officer history).

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- As of October 1, 2020, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**Board Review 13**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 9

Investigator:	<u>Juan Arango</u>	<u>Inv. Juan Arango</u>	<u>03/16/2021</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u>Monique West</u>	<u>IM Monique West</u>	<u>4/20/2021</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date